



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: September 14, 2010
Appeal #Z-12-10

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Subject: Petition for a dimensional variance (Z-12-10) to permit the construction of covered stairs/steps fourteen and one half feet (14 ½') from a front property line at 18 Highway Street, Parcel I.D. # 6820-01-005-0.

Summary

This report addresses a petition from Gerardo Gaona seeking approval of a Dimensional Variance (Z-12-10), to construct covered stairs/steps and build it 14.5' from a front property line. A covered porch is existing and the request is to extend the roofline seven feet (7') over the newly constructed stairs/steps.

Background/Project Information

The subject site is located on Highway Street. The residential lot is approximately 33 feet wide by 136 feet deep with an area of approximately 4,488 square feet and is located within the R-2 (Two-Family Residential) District. The minimum lot standards for the R-2 zone include a minimum lot width of 60 feet and a minimum lot area of 5,000 square feet. The subject lot does not meet the minimum width standard or lot area for the R-2 zone. However, the subject lot size and width is consistent with other lots in the neighborhood including those located directly across the street. The topography of the lot is generally flat with no observable grade changes. As you can see from the aerial on page two of this report, almost, if not all, of the houses on the same block of Highway Street have front yard setbacks that closer than the 25' setback required in the R-2 zone.

The current minimum front yard setback for structures in the R-2 district is twenty five (25') feet. There is an exception to allow **stairs and uncovered porches** that do not rise more than four feet above the ground to project into a required yard, however, the exception **does not apply** in this case because the stairs/steps are to be covered. The request is for a 10.5' variance from the 25' front yard setback requirement for structures in the R-2 zone and allow the petitioner to construct a cover for the steps 14.5' from the front yard property line. We would like to bring to your attention that the project was started without approval from the City in the form of an issued building permit and that there are other homes in the immediate vicinity that have uncovered steps leading up to the entrances of the homes.

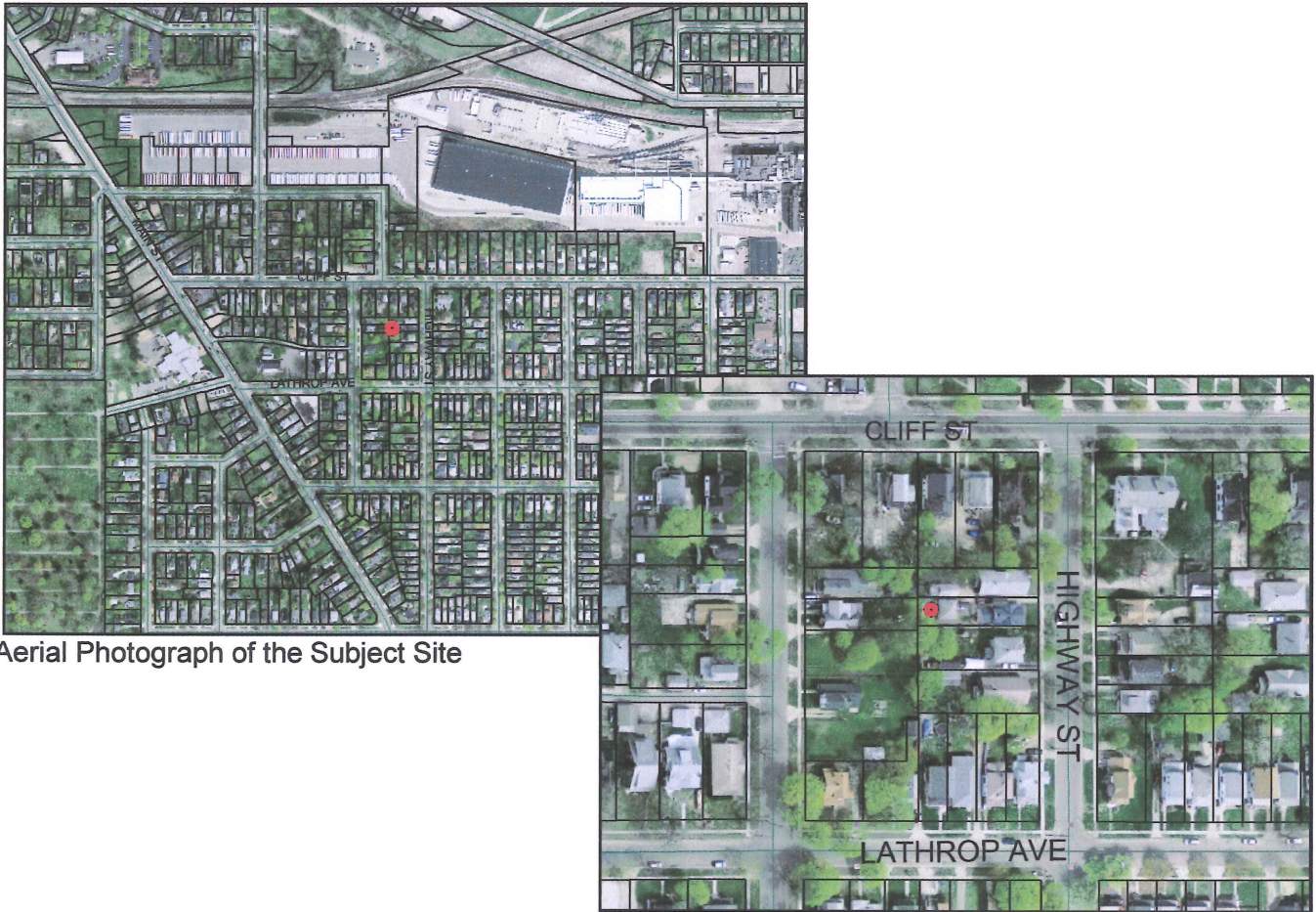
Legal Description

POSTS 2ND ADD BLK 1 LOT 5

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, August 19, 2010 – not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on August 16, 2010 to 85 property owners and occupants located within 300 feet of the subject parcel. Planning staff has received no comments relative to this request.



Aerial Photograph of the Subject Site

Surrounding Land Uses

The subject property is generally located in a well established residential neighborhood.

Applicable Zoning Ordinance Provisions

Chapter 1234.04 (b) (1) authorizes the Zoning Board of Appeals to grant variations in the yard requirement of any district where there are unusual and practical difficulties in the carrying out of the requirements of the Zoning Code due to the irregular shape of the lot or topographical conditions, provided that such a variation will not seriously affect any adjoining property or the general welfare of the public; and

Chapter 1234.04 (b) (2) authorizes the Zoning Board of Appeals to grant variations, upon appeal, whenever a property owner can show that strict application of the provisions of the Zoning Code relating to the use of buildings or structures or to the use of land will impose

upon them unusual and practical difficulties or hardship. This section requires that such variations of the strict application of this Zoning Code as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Master Plan, as established by the Zoning Code, and that the surrounding property will, at the same time, be properly protected.



18 Highway Street showing the location of the proposed covered porch

Analysis

The Appellant is requesting a front yard setback variance that would authorize the construction of a covering for the stairs/ steps extending 7' from the home and 14' from the front yard property line on Highway Street, contrary to limitations outlined in chapter 1286 of the Planning and Zoning Code. The Appellant has stated in the supporting material that the existing structure is already closer than the required 25' setback for front yards and a nonconforming property. The Appellant has supplied additional reasons supporting the request for appeal and they are included with the application and part of this report. A sketch drawing has also been provided.

Is there something unique about this lot or property that makes relief necessary? We would agree that the lot area and width of the subject property is substandard for the R-2 zoning district along with front yard setbacks that are closer than the 25' required. However, the lot size and setback for the home is consistent with others in the neighborhood. Furthermore, there are a number of homes that have uncovered stairs/steps leading up to the entrances of homes in the immediate neighborhood on Highway Street.

Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we do not believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, the Planning staff recommends that the Zoning Board of Appeals deny the Dimensional Variance (Z-12-10) based on the following findings contained in this staff report.

- 1) Staff finds that there is not an unusual and practical difficulty specific to the property in question. We understand that the lot is narrower and smaller than that required for the R-2 district; however, we think the covered porch for the steps is a convenience in this case and moves the nonconforming structure even closer to the front property line.
- 2) Granting the variance and thereby permitting the applicant to move forward with the project in spite of the fact it is not in compliance with the zoning ordinance will not seriously affect any adjoining property or the general welfare of the public. However, staff does not necessarily believe that increasing an already nonconforming structure is in harmony with the general purpose and intent of the R-2 zoning district.
- 3) Staff does not believe that if the variance in question is granted the property will still be in harmony with the general purpose and intent of the R-2 district in that we think that increasing the nonconforming structure will only serve as a convenience in this case.
- 4) Staff believes that if the Zoning Board grants the variance, the setback reduction will serve merely as a convenience to the applicant and will not alleviate some demonstrable practical difficulty so great as to warrant a variation to the Master Plan.

If the Zoning Board finds that all of the above conditions have been satisfied, then all of the following standards must be met, as well.

- 1) Staff does not believe that the Appellant has clearly demonstrated that practical difficulty will in fact exist if the variance is not granted. We understand that the lot is narrower and smaller in area than required for the R-2 district; however, we think the covered porch will only serve as a convenience in this case.
- 2) Staff does not believe that there is practical difficulty associated with this request.
- 3) Staff does not believe that the practical difficulties are exceptional and peculiar to the property of the person requesting the variance for the reasons stated in item #1 above.
- 4) Staff does not believe that the alleged practical difficulties result from conditions which do not generally exist throughout the City in that generally speaking, the City does not support the expansion of nonconforming conditions.

- 5) The Appellant has furnished documentation to indicate that practical difficulties do in fact exist. However, Staff does not think that the furnished documentation relative to unique property conditions meet the standards outlined in the Zoning Code authorizing the Board to grant the variance.
- 6) Staff does not believe the term “practical difficulty” is deemed financial hardship in this case.
- 7) Staff believes the alleged practical difficulty which will result in a failure to grant the variance is not substantially more than a mere inconvenience in this case.
- 8) Staff does not think that by allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the Zoning Code, the individual practical difficulties that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- 9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.
- 10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

Attachments

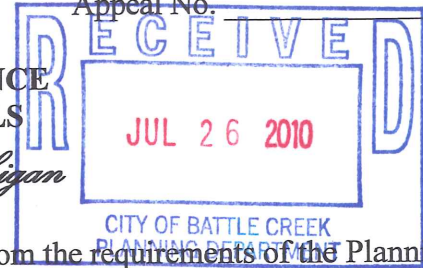
The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-12-10),
2. Sketch plan showing accessory building location
3. General Property Information on file from the City
4. Document furnished by the City Attorney’s Office titled “Dimensional (Non Use Variance-November 2009

Date: 7-26-10

Appeal No. Z-12-10

APPLICATION FOR A VARIANCE
ZONING BOARD OF APPEALS
City of Battle Creek Michigan



pd \$60
anh

An Appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: Gerardo Gaona

Address: 18 Highway St Phone: 986-2462

Name of Owner (if different from Appellant): _____

Address: _____ Phone: _____

TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to:
(Choose One) Extend Erect Waive Use Convert Enclose

Extend roof line to cover new
porch. will not be enclosed

contrary to the requirements of Section(s) 1278.03(d)(1) of the Planning and Zoning Code, upon the premises known as 18 Highway Street Battle Creek, MI, in accordance with the plans and/or plat record attached.

The proposed building or use requires Board action in the following area(s):

Variance to allow extension of porch to be
less than the required 25 ft. for front-yard setback.

Property/Tax I.D.# No. 6820 - 01 - 005 - 0

Size of the Lot: Width 33.00 Depth 136.00
Size of Proposed Building: Width 5' Depth 7' Height 10'

The following reasons are presented in support of this appeal (complete each section):

- a) This property cannot be used in conformance with the ordinance without the requested variance because:

Already nonconforming, closer to street

- b) This problem is due to a unique situation not shared in common with nearby property owners because:

- c) Granting the variance would not alter the essential character of the area because:

Neighborhood of existing historic homes,
most with covered porches

- d) The problem is not self-created because:

already non-conforming

- e) **USE VARIANCES ONLY** It is not possible to use this particular property for any other use currently allowed in the zoning district because:

I hereby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. **In addition, I give permission to the City of Battle Creek's Planning Department staff to access my property, if necessary, to take photographs of the subject of this appeal.**

Gerardo Genoa

(Print Appellant Name)

X *Gerardo Genoa*

(Signature of Appellant)

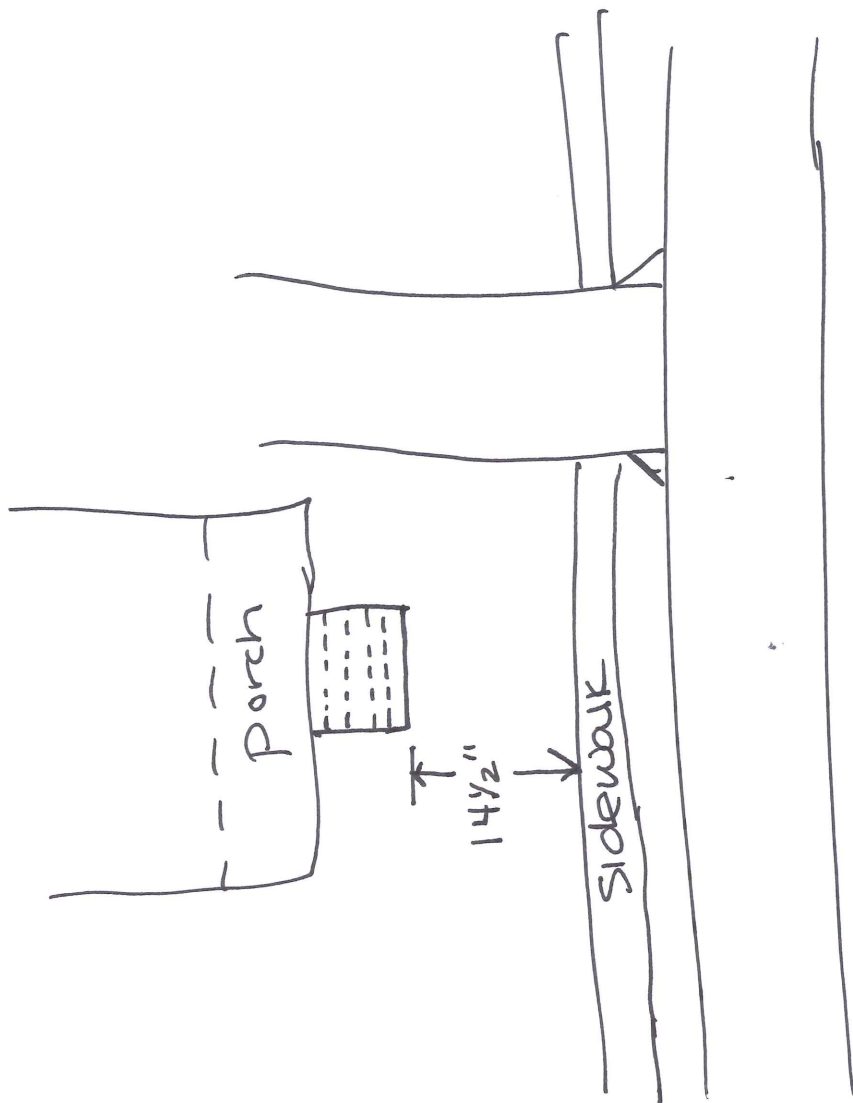
18 Highway St.

(Address of Appellant)

Battle Creek, MI

49014

If you require additional information or assistance in filling out this application, please contact the Planning Department at (269) 966-3320.



General Property Information[\[Back to Non-Printer Friendly Version\]](#) [\[Send To Printer\]](#)

Parcel: 6820-01-005-0

Property Address[\[collapse\]](#)

18 HIGHWAY ST
BATTLE CREEK, MI 49014-5006

Owner Information[\[collapse\]](#)

GAONA, GERARDO
N/A

Unit: 52

Taxpayer Information[\[collapse\]](#)

GAONA, GERARDO
18 HIGHWAY ST
BATTLE CREEK, MI 49014-5006

General Information for Tax Year 2010[\[collapse\]](#)

Property Class:	401	Assessed Value:	\$22,583
School District:	13020 - BATTLE CREEK SCHOOLS	Taxable Value:	\$22,583
State Equalized Value:	\$22,583	Map #	707SE
User Number Indx:		Date of Last Name Chg:	11/15/2006
Date Filed:	12/13/2009		
Principal Residence Exemption (2010 May 1):	100.0000 %		
Principal Residence Exemption (2010 Final):	100.0000 %		
Principal Residence Exemption (2011 May 1):	100.0000 %		

Previous Year Info	MBOR Assessed	Final S.E.V.	Final Taxable
2009	\$28,436	\$28,436	\$28,436
2008	\$30,100	\$30,100	\$30,100

Land Information[\[collapse\]](#)

Acreage:	0.10	Frontage:	33.00 Ft.
Zoning Code:	R2	Depth:	136.00 Ft.
Land Value:	\$838	Mortgage Code:	N/A
Land Improvements:	\$0	Lot Dimensions/Comments:	
Renaissance Zone:	NO		
ECF Neighborhood Code:	20700 - 20700 BC SE		

Legal Information for 6820-01-005-0[\[collapse\]](#)

POSTS 2ND ADD BLK 1 LOT 5

Sales Information

3 sale record(s) found.						
Sale Date	Sale Price	Instrument	Grantor	Grantee	Terms Of Sale	Liber/Page
10/13/2006	\$14,000.00	12	WELLS FARGO FANK N A	GAONA,GERARDO	08 BANK/HUD/VA/FHA	3203/0616
05/06/2005	\$60,437.00	12	PRICE,RONALD W & MARY L	WELLS FARGO BANK NA	02 SHERIFF/FORECLOSU	2986/0498
01/12/1998	\$38,000.00	05	STOFFEL	PRICE	05 WAR DEED	1993/155

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General Property Information

[Back to Non-Printer Friendly Version] [Send To Printer]

Parcel: 6820-01-005-0

Property Address [collapse]18 HIGHWAY ST
BATTLE CREEK, MI 49014-5006**Owner Information** [collapse]GAONA, GERARDO
N/A

Unit: 52

Taxpayer Information [collapse]GAONA, GERARDO
18 HIGHWAY ST
BATTLE CREEK, MI 49014-5006**General Information for Tax Year 2010** [collapse]

Property Class:	401	Assessed Value:	\$22,583
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Land Information [collapse]

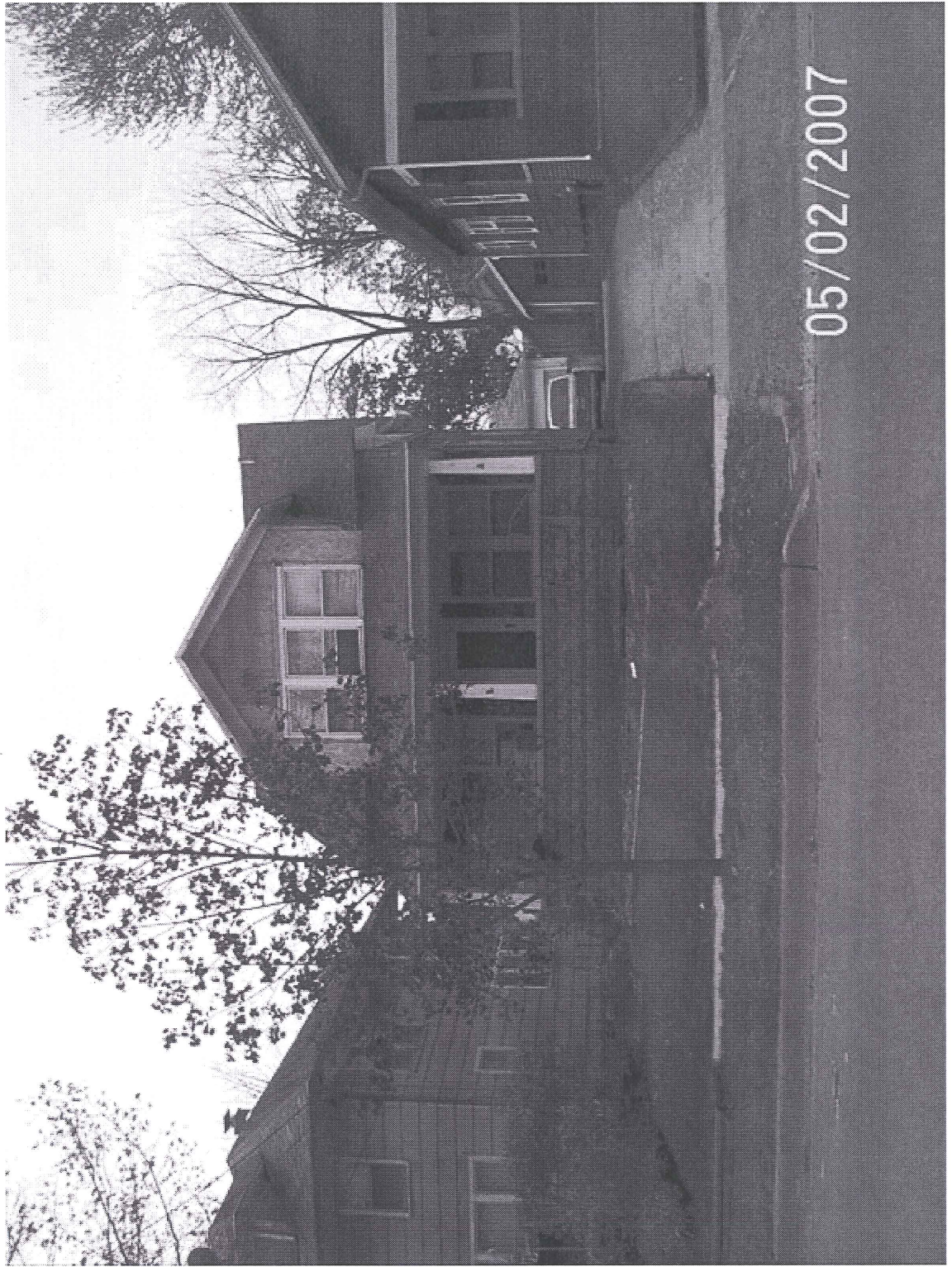
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Legal Information for 6820-01-005-0 [collapse]

Image/Sketch for Parcel: 6820-01-005-0

[Back to Non-Printer Friendly Version] [Send To Printer]

Caption: PHOTO 2007



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Dimensional (Non Use) Variance – November 2009

1. Is there a practical difficulty in carrying out the requirements of this Zoning Code (i.e., must have 25 foot side yard setback) due to the irregular shape of the lot or topographical or other condition? (§1234.04 (b)(1))
 - a. If there is an *unusual* and **practical difficulty specific to this property in question** due to the **shape of the lot, topographical conditions** or something else unique to the land, not unique to the particular applicant, then the variance standards have been met **THUS FAR** and further consideration to below #2 is warranted.
 - b. If there is **NOT** an unusual and practical difficulty specific to this property in question, then the variance does not meet the standards and should **NOT** be granted.
2. Will granting the variance and thereby permitting the applicant to move forward with project in spite of the fact it is not in compliance with the zoning ordinance seriously **affect any adjoining property or the general welfare of the public?** (§1234.04 (b)(1))
 - a. If it will seriously affect any adjoining property or the general welfare of the public, then the variance does not meet the standards and should **NOT** be granted.
 - b. If it will not seriously affect any adjoining property or the general welfare of the public, then the variance does meet the standards **THUS FAR** and further consideration of below #3 is warranted.
3. If you grant the proposed variation(s) to the zoning ordinance in question, will the property still be harmonious with the general purpose and intent of the particular zoning district? (§1234.04 (b)(2))
 - a. If the property will still be harmonious with the general purpose and intent of the zoning district in spite of the variance, then the variance standards have been met thus far and further consideration to below #4 is warranted.
 - b. If granting the proposed variance will make it such that the property is no longer harmonious with the general purpose and intent of the particular zoning district, then a variance is not appropriate and it should **NOT** be granted.
4. Are you satisfied that if the Board grants the variance, it will not merely serve as a convenience to the applicant but will alleviate some demonstrable practical difficulty so great as to warrant a variation from the master Plan and the surrounding property will, at the same time be protected? (§1234.04 (b)(2))
 - a. Granting the variance cannot merely serve as a convenience to the applicant. It if is a convenience, (i.e., saves the applicant money), then it does not meet the



RECEIVED PAYMENT

PLANNING DEPARTMENT
City of Battle Creek, Michigan

To: Gerardo Gaona Date: 7/26/10

18 Highway St.

Battle Creek, MI 49814-5006

For: 213A VARIANCE APPLICATION TO EXTEND Amount \$60
Roof line closer than 25 ft. in front yard
for property located at 18 Highway St.
Parcel # 0820-01-005-0

Total Paid: \$60

For Deposit:

Office of Planning and Community Development
77 E. Michigan Avenue, Suite 204, Battle Creek, MI 49017
Telephone: 269-966-3320 Fax: 269-966-3529

August 3, 2010



Attention Property Owner:

Because you live within the area of requested change, this is to inform you of the following: (See News Article Below)

If you wish to comment on the applications, you may do so at the meeting noted in the article below or in writing prior to the meeting.

Copies of these applications and appropriate maps are available for inspection in the Office of the Planning Department, Suite 204, (Second Floor) Commerce Pointe Building, 77 E. Michigan Avenue, during normal business hours. (Monday – Friday 8:00 A.M. – 5:00 P.M.)

City of Battle Creek

Christine Hilton, AICP

Planning Supervisor

Planning Department

Phone: 269-966-3320 Fax: 269-966-3529

City of Battle Creek, Michigan

NOTICE OF PUBLIC HEARING

CITY ZONING BOARD OF APPEALS

Date: Tuesday, September 14, 2010

At 4:00 p.m., Room 301, City Hall

ZONING VARIANCE, APPEAL # Z-12-10:

Petition of Mr. Gerardo Gaona, 18 Highway St., Battle Creek, MI 49014; requesting a variance from Chapter 1278.03 (d)(1) to allow a porch roof to be built closer than the required 25 ft. front property line setback for property located in an “R-2 Two Family Residential District”. Property legally described as: POSTS 2ND ADD BLK 1 LOT 5 (Commonly known as 18 Highway Street) Parcel #6820-01-005-0.

Additional information on this appeal is available in the Offices of the Department of Planning and Community Development, Commerce Pointe, 77 E. Michigan Ave., Ste 204, Battle Creek, MI 49017, during regular business hours. This hearing is being advertised and will be conducted pursuant to the requirements of Public Act 110 of 2006, as amended for the purpose of receiving public comments. Written comments concerning these items may be submitted in advance of the hearing to the Department of Planning and Community Development, Commerce Pointe, 77 E. Michigan Ave., Ste. 204, Battle Creek, MI 49017. These written comments will be entered into the public hearing record. Any member of the public may appear at these hearings either in person or represented by counsel.

The City of Battle Creek will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at this meeting, to individuals with disabilities and the meeting upon seven (7) days notice to the City of Battle Creek. Individuals with disabilities requiring aids or services should contact the City of Battle Creek by writing or calling the following: Office of the City Clerk, P.O. Box 1717, Battle Creek, Michigan 49017 Phone: 269-966-3348 / TDD: 269-966-3348

Mr. John Stetler, Chairperson

56 properties
w/in 300 ft.

85 mailed

MAILED 8-16-10